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Creditor

UNITED STATES BANKRUPTCY COURT
NORTHER DISTRICT OF CALIFORNIA - OAKLAND DIVISION

In re:

ERICKSEN, ARBUTHNOT, KILDUFF,
DAY & LINDSTROM, INC.,

Debtor(s).

Case No. 23-40134-WJL

**DECLARATION OF DAVID J.
FRANKENBERGER IN SUPPORT OF
OBJECTION TO CONFIRMATION OF
DEBTOR'S PLAN OF REORGANIZATION**

Date: June 21, 2023

Time: 10:30 a.m.

Place: In-Person or Zoom Webinar/AT&T
Telconference
1300 Clay Street
Courtroom 220
Oakland, CA 94612

Judge: Hon. William J. Lafferty

I, David J. Frankenger, hereby declare and state as follows:

1. I am an attorney at law duly licensed to practice my profession before all courts in the State of California and in this District and am an unsecured creditor in the above-entitled bankruptcy case, after having submitted a timely Proof of Claim with this Court in the amount of \$369,900.

2. I was employed by the law firm of Ericksen, Arbuthnot, Kilduff, Day

1 & Lindstrom, Inc. (“Debtor”) from August 1, 2002 to September 11, 2022, and
2 was a shareholder in the Debtor corporation from October 1, 2007 to September
3 11, 2022.

4 3. As of September 11, 2022, I owned 421 shares of Debtor’s stock, to
5 wit, approximately 8.9957% of all available stock in the corporation.

6 4. From October 1, 2014 through August 12, 2022, I held a seat on
7 Debtor’s Board of Directors, and held Officer positions of Vice President and
8 Secretary during that time. I also served as Managing Partner of Debtor’s Fresno,
California branch office from April 1, 2013 to September 11, 2022.

9 5. I submit this Declaration in Support of the instant Motion to Appoint
10 Chapter 11 Trustee.

11 6. If called as a witness, I could and would competently testify to the
12 following from my own personal knowledge.

13 7. From October 1, 2020 to August 12, 2022, Debtor’s Board of
14 Directors consisted of attorneys/shareholders Joseph J. Minioza (Concord, CA),
15 Von Ryan Reyes (San Jose, CA), David J. Frankenberger, William A. Jenkins
16 (Sacramento, CA), Mark L. Kiefer/Angela Kim (Los Angeles, CA), Sharon
Hightower (San Jose, CA), and Graham A. Cridland (Sacramento, CA).

17 8. I provided Debtor’s Board of Directors with thirty (30) days written
18 notice of my intent to separate from Debtor’s law firm on August 12, 2022. On
19 that same day, shareholder William A. Jenkins provided Debtor’s Board of
20 Directors with thirty (30) days written notice of his intent to leave Debtor’s law
firm.

21 9. As of August 12, 2022, Debtor’s Officers consisted of: Joseph J.
22 Minioza (President); Von Ryan Ryes (Treasurer); Sharon Hightower (Vice
23 President); Graham A. Cridland (Chairman of the Board); and, David J.
24 Frankenberger (Secretary). Further, at all relevant times herein, James E. Therien,

1 CPA ("JET") served as Debtor's Controller/Firm Administrator and Manager of
2 Debtor's Corporate Office located at 570 Lennon Lane, in Walnut Creek,
3 California.

4 10. Carol Alice Therien ("CAT") is JET's wife and a principal in an
5 unrelated corporation commonly referred to as Retail Pacific, Inc. ("Retail
6 Pacific"), a business surreptitiously operated, at all relevant times, by JET and
7 CAT out of 570 Lennon Lane, in Walnut Creek, California.

8 11. On or about April 9, 2020, Debtor applied for a \$1,487,500 SBA
9 Payroll Protection Plan ("PPP") loan due to COVID-19.

10 12. On or about May 6, 2020, a total of \$1,487,500 was deposited in a
11 separate bank account JET established at City National Bank. These funds, in turn,
12 were utilized by Debtor to pay Debtor's payroll for approximately 3 and ½ months,
13 resulting in an excess of \$1,487,500 in funds in Debtor's General Account at City
14 National Bank. After taxes were paid to the California Franchise Tax Board,
approximately \$1.38 million in excess "PPP" funds remained in Debtor's General
Account at City National Bank.

15 13. At Debtor's Annual Shareholder Meeting in October 2020, Debtor's
16 shareholders discussed that should be done with the approximate \$1.38 million in
17 excess "PPP" funds remaining in Debtor's General Account at City National Bank.
18 In turn, in or about early-2021, Debtor's Board of Directors voted in favor of
19 keeping the \$1.38 million in excess PPP funds in Debtor's General Account at City
20 National Bank and further voted that these funds totaling \$1.38 million would not
21 be utilized by Debtor without advance notice to all shareholders and a vote of
22 Debtor's Board of Directors in favor of utilizing such funds for a specific purpose
23 to be authorized by the Board of Directors. This policy was conveyed to JET and
24 was repeated at numerous monthly Board of Director Meetings from early-2021
through June 2022, with JET in attendance at all such monthly Board of Directors

1 meetings.

2 14. On October 5, 2021, Debtor's Board of Directors retained Van
3 Dermymden Makus Law Corporation (Firm) to commence an independent
4 investigation for Debtor regarding concerns raised by several employees working
5 in Debtor's Corporate Office about the conduct of Firm Administrator – Controller
6 JET, as well as additional concerns about JET raised by departing employees in
7 exit interviews and by other employees interviewed in the course of the
8 investigation. The complaining employees claimed JET engaged in conduct
9 implicating Debtor's Equal Employment Opportunity (EEO) policy and its
Abusive Conduct Prevention policy.

10 15. On or about January 19, 2022, Leo Muniz from Van Dermymden
11 Makus provided Debtor's Board of Directors with a written report confirming
12 JET's violations of Debtor's Equal Employment Opportunity (EEO) policy and its
13 Abusive Conduct Prevention policy.

14 16. In or about February 2022, Debtor's Board of Directors voted
15 unanimously to "separate from" JET as Debtor's Controller/Firm Administrator
16 upon the stated grounds that the Board of Directors "did not trust" JET with
17 Debtor's finances, and in view of the written report received from Leo Muniz of
Van Dermymden Makus.

18 17. From February 23, 2022 to July 15, 2022, Debtor's Board of Directors
19 actively negotiated a "Severance Agreement" with JET whereby Debtor would
20 separate from JET in exchange for \$110,000 in "severance pay" from Debtor to
JET.

21 18. JET's purported last day on the job with Debtor was scheduled for
22 July 15, 2022; however, JET refused to execute his "offboarding paperwork"
23 and/or the Severance Agreement that Debtor's Board of Directors presented to
24 him.

1 19. On or about July 21, 2022, Debtor hired Ammar Latif to replace JET
2 as Debtor's Controller/Firm Administrator. Debtor's Board of Directors, at that
3 time, voted in favor of keeping JET employees with Debtor on a short-term basis
4 to "train" Mr. Latif. In turn, on or about August 25, 2022, Debtor parted ways with
5 Mr. Lattif as Debtor's replacement Controller/Firm Administrator. On or about
6 that same date, Mr. Lattif sent a note to Debtor's Board of Directors explaining
7 that he received no "supervision" and/or training from JET and questioned
8 Debtor's accounting practices, stating that everyone does "accounting" at Debtor's
Corporate Office "except real accountants."

9 20. As of February 2022, there was approximately \$2.9 million in total
10 funds – including \$1.38 million in excess PPP funds, in Debtor's General Account
11 at City National Bank. Only three (3) of Debtors employees – JET, President
12 Joseph J. Minioza, and Treasurer Von Ryan Reyes – had access to these funds as
13 held in Debtor's General Account at City National Bank.

14 21. As of June 28, 2022, Treasurer Von Ryan Reyes reported that Debtor
15 had \$931,122.29 in its General Account at City National Bank.

16 22. On August 10, 2022, Viorica "Vio" Stoenescu ("Stoenescu"), an
17 employee in Debtor's Corporate Office, reported to Debtor's Board of Directors
18 that Debtor would only have \$214,841.33 remaining in its General Account at City
19 National Bank after hitting "send" on Debtor's August 15, 2022 payroll, exclusive
20 of the \$110,000 offered to JET as "severance pay." In turn, on August 10, 2022 at
21 or about 5:39 p.m., Debtor Treasurer Von Ryan Reyes sent an email message to
22 Debtor's Board of Directors indicating, "I don't necessarily understand why...
Over \$1 million in PPP money has disappeared."

23 23. On May 24, 2022, shareholders David J. Frankenberger and Brett L.
24 Runyon filed a Summons and Verified Complaint for Enforcement of Right to
Inspect Records of Corporation, against defendant Ericksen, Arbuthnot, Kilduff,

1 Day & Lindstrom, Inc., in Fresno County Superior Court (“FCSC”) Case No. 22
2 CE CG 01589. The parties to FCSC Case No. 22 CE CG 01589 in turn stipulated
3 to have *Frankenberger, et al. v. Ericksen, Arbuthnot, Kilduff, Day & Lindstrom,*
4 *Inc.* heard by an agreed-upon arbitrator, the Honorable Stephen J. Kane (Ret.).

5 24. On September 29, 2022, Justice Kane issued an Interim Order in
6 connection with FCSC Case No. 22 CE CG 01589, ordering, amongst other things,
7 that Debtor produce the following financial documents to plaintiffs Frankenberger
8 and Runyon: federal and state income tax returns; Articles of Incorporation;
9 Bylaws and Amendments to Bylaws; profit and loss statements and annual balance
10 sheets including “backup” documentation; all reimbursement checks paid to JET;
11 bonus checks paid to JET; Debtor’s IRA Form W-2’s provided to JET; written
12 employment contracts between Debtor and JET; written lease agreements and sub-
13 lease agreements between Debtor and CAT dba Retail Pacific, Inc.; reporting
14 showing the gross amount billed out to each client; RINA Accountancy & Advisors
15 reports determining Debtor’s stock value; unpaid bank promissory notes; bank
16 account statements; reports showing “fixed expenses” sustained at each of
17 Debtor’s branch offices including the Corporate Office in Walnut Creek; and, all
18 reports showing “variable expenses” sustained at each of Debtor’s branch offices
19 including the Corporate Office in Walnut Creek.

20 25. In November 2022, Debtor produced some documents to plaintiff
21 Frankenberger and Runyon in response to Justice Kane’s September 29, 2022
22 Interim Order but failed/refused to produce “backup” documentation for Debtor’s
23 profit and loss statements and annual balance sheets; certain reimbursement checks
24 paid to JET; certain bonus checks paid to JET; written lease agreements and sub-
lease agreements between Debtor and CAT/Retail Pacific, Inc.; full and complete
bank account statements; and, backup documentation evidencing payments
received and payments made by Debtor secondary to the bank account statements

1 Debtor did produce.

2 26. At no time between February 2022 and August 10, 2023 did Debtor's
3 Board of Directors vote in favor of allowing JET, Debtor President Joseph J.
4 Minioza, and/or Debtor Treasurer Von Ryan Reyes to utilize of the \$1.38 million
5 in excess PPP funds in Debtor's General Account at City National Bank as of
6 February 1, 2022, and it appears JET utilized and/or embezzled all monetary funds
7 in Debtor's City National Bank as of February 1, 2022, including, but not limited
8 to, \$1.38 in excess "PPP" funds.

9 27. Debtor President Joseph J. Minioza gave his thirty (30) day written
10 notice to Debtor in or about October 2022.

11 28. Debtor Treasurer Von Ryan Reyes remained with Debtor through
12 December 31, 2022. Further, Mr. Reyes' San Jose-based partner/shareholder,
13 Sharon Hightower, remained with Debtor through December 31, 2022.

14 29. JET remains a Debtor employee through the present date and is being
15 paid by Debtor through Debtor's bankruptcy estate.

16 30. On information and belief, Reyes, Hightower, and JET were
17 responsible for retaining Kyle Everett as Debtor's "Wind Down Manager" and Mr.
18 Everett is being paid by Debtor's bankruptcy estate to serve in this capacity.

19 31. Debtor filed the instant Bankruptcy Petition on February 3, 2023. In
20 turn, appropriate law enforcement entities in Fresno and Contra Costa Counties
21 initiated criminal investigations concerning the disappearance of approximately
22 \$2.9 million in missing funds, from Debtor, between approximately February 1,
23 2022 and August 10, 2022, as related to suspected fraud and embezzlement.

24 32. From my perspective as a former Shareholder and member of
Debtor's Board of Directors, \$2.9 million of Debtor's funds went missing between
February 1, 2022 and August 10, 2022 due to a fraudulent scheme carried out by
Debtor's Controller JET which scheme also involved dishonesty, incompetence,

1 and/or gross mismanagement of Debtor's management before commencement of
2 the instance bankruptcy case, in particular the gross negligence of Debtor's San
3 Jose-based shareholders Von Ryan Reyes and Sharon Hightower in supervising
4 JET's accounting practices. A full investigation of this activity needs to take place,
5 and it needs to be done by an independent court-appointed fiduciary.

6 33. Further, since JET remains Debtor's employee and Debtor's San Jose-
7 based shareholders were responsible for the hiring of Wind Down Manager DSI,
8 it is my belief that it's in the best interests of all creditors that DSI not be the party
9 responsible for managing the investigation into Debtor's financial affairs and
litigation on behalf of the estate.

10 I declare under penalty of perjury pursuant to the law of the United States of
11 America that the foregoing is true and correct. Executed this 16th day of June
12 2023, at Fresno, California.



David J. Frankenberger